

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:03

PLR-118517-20

Date:

February 22, 2021

Legend

X:

Sub:

Trust 1:

Trust 2:

Trust 3:

State:

Date 1:

Date 2:

Date 3:

Dear _____ :

This letter responds to a letter dated August 18, 2020, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal

Revenue Code for an Inadvertent Termination of an S Corporation Election and relief pursuant to § 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to elect to treat Sub as a qualified subchapter S subsidiary (Q-Sub) under § 1361(b)(3).

FACTS

According to the information submitted and representations within, X was organized under the laws of State on Date 1 and elected to be an S corporation effective Date 2. On Date 2, X acquired all of the stock of Sub. X represents that at all times on and after Date 2, X has owned all of the outstanding stock of Sub. X represents it intended to elect to treat Sub as a Q-sub effective Date 2. However, X represents it failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election, for Sub. X further represents that at all times since Date 2 Sub qualified and was treated for federal tax purposes as a Q-sub.

Additionally on Date 2, Trust 1 owned shares of X stock. X represents that Trust 1 was qualified to be an electing small business trust (ESBT) within the meaning of § 1361(e). However, no election was made under § 1361(e) to treat Trust 1 as an ESBT. Consequently, Trust 1 was an ineligible shareholder, and, as a result, X's S corporation election was ineffective.

On Date 3, Trust 2 and Trust 3 acquired shares of X stock. X represents that Trust 2 and Trust 3 qualified as ESBTs within the meaning of § 1361(e). However, no ESBT elections were filed on behalf of Trust 2 and Trust 3 and, therefore, had X not already made an ineffective election, X's S corporation election would have terminated on Date 3 because Trust 2 and Trust 3 were ineligible shareholders.

X represents that the circumstances resulting in the ineffectiveness of X's S corporation election were inadvertent and were not motivated by tax avoidance or retractive tax planning. Additionally, X represents that X and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for X. Further, X and its shareholder agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year. Section 1362(a)(2) provides that an election shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

Section 1361(b)(1) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not (A) have

more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1361(b)(3)(A) provides that, except as where provided otherwise, (i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items of the S corporation.

Section 1361(b)(3)(B) defines a qualified subchapter S subsidiary as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a qualified subchapter S subsidiary.

Section 1361(c)(2)(A)(i) provides that for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E of part 1 of subchapter J of Chapter 1) as owned by an individual who is a citizen or resident of the United States may be a shareholder of an S corporation.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B) an ESBT may be a shareholder of an S corporation.

Section 1361(e) an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under this subsection applies to such trust.

Section 1361(e)(3) provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1.1361-3(a) prescribes the time and manner for making an election to be classified as a QSub. Section 1.1361-2(a)(4) provides that an election may be effective up to two months and 15 days prior to the date the election is filed or not more than 12 months after the election is filed. The proper form for making an election is Form 8869, Qualified Subchapter S Subsidiary Election.

Section 1.1361-3(a)(6) provides that an extension of time to make a qualified subchapter S subsidiary election may be available under procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2)(A) provides that an election under 1362(a) will be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) governs the treatment of inadvertent terminations of S elections, providing that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1361(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken (so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, or (B) to acquire the required shareholder consents, and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation or a qualified subchapter S subsidiary during the period specified by the Secretary.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3(a), a request for relief will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(i) provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer; requests relief under this section before the failure to make the regulatory election is discovered by the Service.

Section 301.9100-3(c)(1)(i) generally provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been made timely.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the failure of Trust 1 to make an ESBT election effective Date 2 caused an inadvertent ineffective election of X's S corporation election within the meaning of § 1362(f) on Date 2. Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation beginning on and after Date 2 unless X's S corporation is otherwise terminated under § 1362(d). Moreover, had X's S corporation election been effective, it would have terminated on Date 3 upon the failure of the trustees to file ESBTs elections for Trust 2 and Trust 3. Similarly, these terminating events would have been an inadvertent termination within the meaning of § 1362(f).

Additionally, based solely on the facts submitted, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of 120 days from the date of this letter to elect to treat Sub as a Q-Sub, effective Date 2. The election should be made by filing Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center, a copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concern whether X is a valid S corporation or whether Sub is eligible to be a Q-Sub.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Adrienne M. Mikolashek
Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):
Copy of this letter
Copy for 6110 purposes

cc: